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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Martin Bekins, deceased; MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Katherine Bekins, deceased; JAMES IRVINE, J. R. MASON, JAMES H. JORDAN, A. HEBER WINDER, as trustee of Eva A. Parrington Trust; C. A. Moss, and H. E. CURTIS, creditors of Lindsay-Strathmore Irrigation District,

Petitioners,

vs.

LINDSAY-STRATHMORE IRRIGATION DISTRICT, an insolvent taxing agency,

Respondent.

No. 696

JAMES H. JORDAN, J. R. MASON, L. F. ABADIE, GEORGE F. COVELL, and FIRST NATIONAL BANK OF TUSTIN (a corporation),

Petitioners,

vs.

PALO VERDE IRRIGATION DISTRICT, an irrigation district,

Respondent.

No. 698

PETITION FOR A REHEARING.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Comes now petitioner J. R. Mason, the owner of some bonds of respondents, appearing in propria persona and respectfully submits this, his petition for a rehearing in the above entitled causes.

Your petitioner is a layman, who subscribes to the quotation from "The Rights of Man", by Thomas Paine, as follows:

> "The end of all political associations is, the preservation of the rights of man, which rights are liberty, property, and security; that the nation is the source of all sovereignty derived from it: the right of property being secured and inviolable, no one ought to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity."

POINT I.

Among the objections raised in the Courts below, the chief question presented is, in the opinion of this petitioner, as follows:

> "Where a State has created a Governmental **Single-Tax** 'Enclave', and empowered it to contract and exercise the power of direct taxation upon the value of land, without limitation as to rate, amount or time, to whatever extent may prove necessary to meet its contracts, can such power once given be withdrawn until the contract is satisfied, even when, as here, the State

Supreme Court has decided that the power given Respondents and all their property constitute a 'Public Trust', owned by the State and immune from taxation, partition and execution?''

At the time this Honorable Court approved 11 U. S. C. A. 401-403 in *U. S. v. Bekins,* 304 U. S. 27, the California Courts had rendered a great many decisions, giving a wide variety of interpretations to the nature of irrigation districts, even going so far in one case as to hold them not to be political subdivisions. (*Wood v. Imperial I. D.,* 216 Cal. 748, 753.) The *Bekins* case, supra, was decided in April, 1938. On November 28, 1938, the California Supreme Court, with full knowledge of the extent of the Bekins ruling, decided four cases,* which reversed and clarified prior conflicting interpretations, and put respondents wholly outside the class eligible to come under 11 U. S. C. A. 401-403, if, under the separability clause in it, the contracts of any kind of state instrumentality are entitled to immunity.

**Provident Land Corp. v. Zumwalt,* 12 Cal. (2d) 365, 85 P. (2d) 116; *El Camino I. D. v. El Camino Land Co.,* 12 Cal. (2d) 378, 85 P. (2d) 123; *Clough v. Compton-Delevan I. D.,* 12 Cal. (2d) 385, 85 P. (2d) 126; *Moody v. Provident I. D.,* 12 Cal. (2d) 389, 85 P. (2d) 128; *Anderson-Cottonwood I. D. v. Klukkert,* 13 Cal. (2d) 191, 88 P. (2d) 685; *Glenn-Colusa I. D. v. Ohrt,* 31 Cal. App. (2d) 619, 88 P. (2d) 763; *Pac. Coast Jt. Stock Land Bank v. Roberts* (Dec. 1940), 1 Cal. Dec. 467. In *Bekins v. Heiken* (Dec. 7, 1940), 1 Cal. Dec. 258, the same court that issued *Clough v. Baber,* 38 Cal. App. (2d) 50, clarified that opinion, as follows:

"The latest case applicable here is *Clough v. Baber* (supra). There an irrigation district was involved, and the district was admittedly insolvent. The rule is there laid down supported by a long line of well-recognized authorities that when the debtor is insolvent and there are not sufficient funds with which to pay all obligations in full, and the power to raise funds by taxation *or otherwise* has been exhausted, then equity may order the accessible money prorated among the holders of all valid claims. Such a situation, however, does not here exist. We have no showing of insolvency (and such a status cannot be assumed except upon clear proof), and the power to raise funds by taxation or otherwise has not been exhausted."

In addition to ruling on November 28, 1938, that the functions of California irrigation districts are "exclusively governmental", and their bonds payable from unlimited ad valorem taxes, it was held that

> "the district may freely transfer, lease or otherwise deal with the lands, in so far as its *power* is concerned, but the *lands* remain in trust, and the district exercises its powers, however broad, as a trustee * * * it necessarily follows that their proceeds, whether by sale or lease, are likewise subject to the trust. * * * The land is the ultimate and only source of payment of the bonds. It can never be permanently released from the obligation of the bonds until they are paid. * * * Any practice which removes the land from its position as ultimate security for the bonds, or which places its proceeds beyond the reach of the bondholders, destroys that plan and is contrary to the spirit of the act." (*Provident Land Corp. v. Zumwalt,* 85 P. (2d) 116.) (November 28, 1938.)

> "It is clear that while it has been held in a number of cases, prior to the amendment of Sec. 52, supra, that a money judgment was proper to be entered against the district, and also necessary to prevent the bar of the statute after the lapse of four years, it is likewise clear that the entering of a money judgment against the district does not give to a bondholder any additional remedies in seeking to enforce the payment on matured bonds and coupons * * * The endorsement on the bonds and coupons by the treasurer of the district binds the district to pay that rate of interest whenever funds are available for such purpose. Thus the financial interests of the plaintiff are rendered exactly the same by the endorsement as it would

be after obtaining a money judgment * * * That the annual assessments and the sale of lands upon which the assessments are not paid may never realize sufficient money to pay the indebtedness of the district is entirely beside the question. The property of the district, so far as it owns any property, constitutes a public trust and is held by the district for a public use, and, therefore is not subject to levy and sale upon execution by a creditor of the district." (Citations.)

Moody v. Prov. I. D., 85 P. (2d) 128. (November 28, 1938.)

These decisions of the highest state Court, were followed by still later decisions, holding that all property, including land acquired by the district for unpaid taxes, and crops received in lieu of cash rent, are completely tax exempt (*Anderson-Cottonwood I. D. v. Klukkert,* supra, and *Glenn-Colusa I. D. v. Ohrt,* supra), which appear to clearly bring respondents under the same rule as was decreed by this Honorable Court in *N. W. University v. Miller,* 99 U. S. 309, and would seem to make it certain that Congress in 11 U. S. C. A. 401-403, Sec. 83(i) did not intend nor attempt to include such instrumentalities of a state as respondents, nor their contracts.

In none of the hearings in re 11 U. S. C. A. 401-403, nor in the remarks prior to its passage in Congress was there a suggestion it could apply except to districts that are "mere agents of the landowners and not of the State in the exercise of their powers", and to bonds secured by special assessments, limited both as to time and to benefits received, such as Arkansas

drainage districts are held by their Courts to be. None of the hearings show testimony taken from an actual working farm owner, who ever asked for the amendment. But, Mr. C. H. Scott, President, National Drainage Association, testifying on March 17, 1937, before the House Committee on the Judiciary said that the Farm Credit Administration would not purchase mortgages on land in districts in financial difficulty, until bonds ahead of the mortgages were scaled down.

The same conflict of interest exists in every county and city with bonds out. Given the power to "compose" the tax-secured bonds of local governments, encouragement would be given to all mortgage holders, ground rent collectors and like situated groups to open a drive on Congress to amend the act again, permitting involuntary as well as voluntary petitions, and omitting any consent by any creditors. There are, in fact, already whisperings that this is to be sought, soon. Your petitioner regards as ominous, in view of the strong charges of usurpation of state rights made by 41 states in the *New River* case, decided December 16, 1940, that no state official has appeared to criticize or oppose the original Chapter IX or the present amended Chapter IX in any of the hearings, or the petitions filed by any local government. (Per contra, see brief for rehearing in No. 859, October term, 1935, filed by ten states. Dated September 23, 1936.) Knowing that Congress is, in effect without power to levy direct taxes (*Pollock v. Farmers L. & T. Co.*, 157 U. S. 429) the total absence of objection from state

officials to letting Congress have the power to regulate the state's contract to collect direct taxes, is clear proof that powerful groups are sympathetic to any move to regulate this power of the state.

When Congress authorized the R. F. C. to refinance respondents, it recognized that some persons would desire to hold their bonds to maturity or until paid. The fact that Congress provided that a loan could be made to any district, when owners holding a mere majority had consented to accept the price offered, makes it clear that the subsequent efforts in both the federal and state Courts have not been necessary. If any private interests had employed similar coercive schemes to compel a local government to honor none of its bonds, except those held by the group, until they had acquired all the bonds, at their price, how would that be any different from the instant case? In the case of Oakdale Irrigation District, the R. F. C. allowed over a million dollars of 5% bonds (now quoted at 113 bid) to remain out, after "co-operating" with the same district in "refinancing" most of that district's bonds at 50 cents, flat, even including 6% bonds. The prices being demanded for land in that district from homeseekers today are so high that few can afford to buy. Thus, no "scale down" of such bonds serve to benefit any homeseeker, but only to take property rights from the investors in public bonds to enrich mortgage and land holders. Neither can such "refinancing" benefit any tenant or "share cropper". It will enable a working farm owner to have more money to pay a mortgage, but is that not

equally true in every community with bonds out? Your petitioner is deeply sympathetic with the plight of overmortgaged citizens in both country and city, and has long believed that there must be a drastic write down in such mortgages. But, he also believes that no group of citizens should be allowed to succeed in forcing down the mandatory tax rate, whether directly or indirectly as is being sought here, when the rule of law is the opposite, when any one citizen seeks debt relief. Section 64(a) General Bankruptcy Act.

In brief, if groups can achieve such private enrichment, it would be no more "revolutionary" to amend the other sections of the act to permit any citizen unable to meet his debts, to pay private creditors, *before* taxes.

An argument to the effect that because other citizens have chosen to surrender rights guaranteed them under our Declaration of Independence and Bill of Rights, and taken whatever was offered proves the "fairness" of any repudiation of a contract, and makes it unjust for Petitioner to seek to protect not alone his rights, but those of the sharecroppers, tenants and even the citizens still less fortunate, who also have rights, is no more valid than to argue that because a majority had consented to surrender any other rights, guaranteed under our Constitution, your Petitioner should be compelled to do likewise.

The Court may take judicial notice that in no instance has any Court below in California so much as questioned the figure, set by the R. F. C., or suggested it be changed up or down, by a fraction of one cent.

It is as impossible for any creditor to prove the ability of respondents to pay, as it would be to prove the ability or inability of any county or city to pay its debts. If there is any "measuring rod", your petitioner has never heard of it being even discussed in any proceedings under Chapter IX.

That the levy and collection of such taxes by the states was understood to be "independent and uncontrollable" in the "most absolute and unqualified sense", is stated by Hamilton in Federalist Essay No. XXXII. Also see Nos. XXXI, XLIV/XLVI. Thus, by denying this petition, will not the way be opened for Congress to pass even such an act as was passed in England by Parliament in 1660 (12 Charles II., c. 23) and which exempted landed property from the dues previously payable to the state, and shifted the costs of government over to the rent racked tenants of the feudal lords in both city and country? The events, both abroad and at home, during recent years involving "usurpation" of one kind or another, seem to make it imperative, as perhaps never before that the precise line of partition between the power of the general and state governments to levy direct taxes be either re-affirmed as in *Ashton v. Cameron County W. I. D.,* 298 U. S. 513, or more clearly marked than it is in the *U. S. v. Bekins* case, supra.

The "Royal Commission of Dominion-Provincial Relations", reported its findings to the Canadian Government in 1940, in three large volumes. Although recognizing the serious plight of municipalities in Canada, it is nowhere even suggested that any juris-

diction can be vested in the Dominion, but declares that exclusive power resides in the Provinces.

That tax defaulted real estate, and neglect, failure and refusal by most, if not all the states to deal effectively with it, constitutes a problem that can not longer be safely blinked at, is proven in reports of planning and tax commissions in many states. An example is the 400 page 1939 report by the Illinois Tax Commission, which shows that such delinquencies in Illinois and adjoining states are very large, and as one witness said (p. 197) "tax delinquency in Cook County is its Number One Problem".

Your petitioner is not certain whether the **Single-Tax** nature of the amendment to Section 35 of the act under which the bonds of respondent Lindsay-Strathmore District were issued (Stats. 1909, p. 461) has been clearly understood by this Court. Under this amendment, the revenues necessary for the district to levy for expenses are derived from taxes, on the *value* of the land only. Such taxes or assessments are not levied according or limited to benefits. (*Judith Basin I. D. v. Malott,* 73 F. (2d) 142.) If not paid within 3 years, title to the land passes to the district "free of all encumbrances". (Sec. 48.) The district has also full power to rent land. (Sec. 47.) That such a state "Enclave" is not contrary to the letter or spirit of our form of government is discussed in *Fairhope Single Tax Colony v. Melville,* 69 So. 466; (*Henry*) *George v. Braddock,* 18 A. 881; *State v. Amana Soc.,* 109 N. W. 894. These cases were long and bitterly contested.

All economists now agree with the conclusion in the unanimous decision by this Court in the *Pollock* cases, supra, that a landlord can not shift a tax on ground rent to a tenant or anybody else. They further agree that such a tax can in no way add to costs of production, nor cause inflation, nor lessen the buying power of non-land owning consumers. But such taxes do force those holding land for speculation to improve or sell it to some one that can and will.* There is no obligation for any man to hold title to land he thinks too heavily taxed, nor can a district get more than the rental value for its land.

> "A landlord is entitled to insist that his lease be either rejected or fully assumed, under the plan."
>
> *Monk Realty Co. v. Wise Shoe Stores,* 111 F. (2d) 287, 290 (1940).

The Oakdale Board of Trade said five years after this amendment:

> "The Single Tax has made a great difference for the betterment of the Oakdale Irrigation District. * * * Many say they can now afford to borrow money and make improvements which they could not do under the old system. We invite farmers to come and settle among us. Their in-

*"A tax on rent falls wholly on the landlord (and mortgage holder). There are no means by which he can shift the burden upon anyone else."
"Principles of Political Economy," by John Stuart Mill.
See also "Wealth of Nations" by Adam Smith, Book V, Ch. 2, part 2, art. 7; "Social Statics", by Herbert Spencer (1851 Ed.), Chap. IX, "The right to the use of the Earth"; "Elements of Social Science", by Patrick Edward Dove (1854), Part II; "Principles of Economics", Taussig, 3rd Revised Edition, page 540; "Progress and Poverty", by Henry George, Book VII, Chap. 2, pars. 1-5, and Book IV, Chap. 2, par. 10 et seq.; "Condition of Labor", by Henry George, Sec. 1, first footnote.

> dustry will not be taxed. Our Single Tax system encourages industry. We make the man who keeps his land idle pay the same tax as the man who improves. Those who build up our community and create its wealth will not be penalized."

In addition to the attack against this act in *Fallbrook Irr. Dist. v. Bradley,* 164 U. S. 112 (1895), when Attorney Maxwell warned this Court,

> "It is communism and confiscation under guise of law"

there were almost unceasing attacks brought, especially after Stats. 1909, p. 461. But this amendment was upheld in *Mordecai v. Supervisors,* 183 Cal. 434.

In 1919 the act was further amended to permit the districts to generate and distribute electric energy, and to issue revenue bonds. (Stats. 1919, p. 778.) In 1932 the Irrigation Districts Assn. of California warned through its secretary Mr. Walter D. Wagner that the same utility interests which opposed the Boulder Dam and All-American Canal,

> "are now attempting to throw the (Imperial) District into default; they are handicapping the Board of Directors in every way possible, and are apparently influencing the banks to indirectly and perhaps inadvertently aid them in their nefarious scheme. They are willing to wreck everything and everybody in order to prevent that electric power (on All-American Canal) being generated by the District. * * * The attempt of these interests to wreck the district and the 62,000 people in it, is dastardly * * *." (Fresno Bee, May 12, 1932.)

This power question was decided in *Nev.-Cal. Elec. Co. v. Imperial I. D.,* 85 F. (2d) 886. Hearing denied by this Court.

The Christian Science Monitor, June 14, 1934, page 1, in a special wireless from Madrid, tells about the struggle by Catalonia, Spain, to get a law similar to the law creating respondents. It tells that Spain's highest Court at Madrid had the week before declared unconstitutional such a law enacted by Catalonia, and that the state had then enacted another one, which is "not favored by the central government because it splits Catalonia into small farms, advantageous to small holders". This incident, it is claimed, was the main spark which started the civil war in Spain.

The Hearings (4 volumes) of the House Interstate Migration Committee, printed pursuant to H. Res. 63 and 491, and such books as "Factories in the Fields", and "Grapes of Wrath", disclose a concentration of land holdings which the constitution of Cal. Art. XVII, Sec. 2 (1879), (the same year "Progress & Poverty" appeared), so clearly denounced as being "against the public interest".

Abraham Lincoln, in a letter to his law partner Gridley said:

> "The land, the earth that God gave to man for his home, his sustenance and support, should never be in the possession of any man, corporation, society, or unfriendly government, any more than the air or water, if as much. An individual company or enterprise requiring land should hold no more in their own right than is needed for their home and sustenance, and never more than they have in

actual use in the prudent management of their legitimate business, and this much should not be permitted when it creates an exclusive monopoly. All that is not so used should be held for the free use of every family to make homesteads, and to hold them so long as they are so occupied. A reform like this will be worked out some time in the future. The idle talk of foolish men * * * will find its way against it, with whatever force it may possess, and as strongly promoted and carried on as it can be by land monopolists, grasping landlords, and the titled and untitled senseless enemies of mankind everywhere."

("Abraham Lincoln, The men of his time", Robt. H. Browne, Vol. II, p. 89.)

Lord Thos. B. Macauley in his famous letter of May 23, 1857 said:

"I have long been convinced that institutions purely democratic must sooner or later, destroy liberty, or civilization, or both * * * You may think your country enjoys an exemption from these evils. I will frankly own to you that I am of a different opinion. Your fate, I believe to be certain, though it is deferred by a physical cause. As long as you have a boundless extent of fertile and unoccupied lands, your laboring population will be far more at ease than the laboring population of the Old World * * * But the time will come when New England will be as thickly populated as Old England. Wages will be low; and will fluctuate as much with you as with us * * * Then your institutions will be fairly brought to the test * * * As I said before when a society has entered on this downward progress, either civilization or liberty must perish. Either some

Caesar or Napoleon will seize the reins of government with a strong hand or your republic will be as fearfully plundered and laid waste by the barbarians in the 20th century as the Roman Empire was in the fifth—with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without and that your Huns and Vandals will have been engendered within your own country, by your own institutions."

(Littels Living Age, May 19, 1860.)

"While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation." Chief Justice Taney in *Charles River Bridge v. Warren Bridge,* 11 Pet. 419.

"Here (Sicily), in the end, Rome laid her mortmain upon Greek Phoenician, and Sikelot alike, turning the island into a granary and reducing its inhabitants to serfdom."

(Italy and Greece by J. A. Symonds, page 143.)

"Men, too often in their revenge set the example of doing away with those general laws to which all alike can look for salvation in adversity." *Thucydides,* 426 B. C.

POINT II.

While petitioner has devoted himself mainly to the basic constitutional question because of the fundamental importance thereof, petitioner submits that the point he is about to present is a most important point of law involved in this case.

On the question of whether the R. F. C. is a creditor "affected" by the plan, your petitioner again urges that the Court below erred in holding that it is.

In support of this view he submits the able opinion of the learned trial judge in the recent case of *Texas Agricultural Assn. v. Hidalgo County W. C. & I. District,* 36 F. Supp. 314 (decided on rehearing Feb. 10, 1941):

> "While under the statute the R. F. C. has the right to be considered as a creditor, for the whole amount *for voting purposes* (citations), yet a construction of the contract with R. F. C. as a whole clearly shows that the District's indebtedness is not the amount of the original, old securities, but only in the amount of the disbursements actually made by R. F. C. under its loan."

Unless the contract between R. F. C. and respondents differs essentially from that with this Texas district, which your petitioner believes it does not, this very important point which was so carefully studied in *American United Mutual Life v. Avon Park,* No. 31, October Term, 1940 (decided Jan. 1941), should be thoroughly investigated by this Honorable Court, because it has never before been squarely and clearly discussed in any of the other opinions, in the Courts below, so far as your petitioner is aware.

That there is uncertainty in the Courts below, and a serious necessity that the question presented be resolved by this Court is evidenced by the conflicting judgments in *Central R.R. of N. J. v. Martin,* 115 F. (2d) 968 and *Arkansas Corp. v. Thompson,* 116 F.

(2d) 179; *In re Mission School District,* 35 F. Supp. 37 and 116 F. (2d) 175.

Because the Court in *U. S. v. Bekins,* supra, did not explicitly overrule or reverse the *Ashton* case, supra, a rehearing and opinion that would resolve the existing confusion, would save much uncertainty, and time of the Courts below, which conflict now threatens utter chaos in many local governments, and increasing demands for undemocratic legislation.

The nation-wide importance of the issue, is one of the reasons why your petitioner submits this urgent plea for a review, and that writs of certiorari may issue out of and under the seal of this Honorable Court, as prayed for in the petitions for writs of certiorari herein.

Dated, San Francisco, California,
March 7, 1941.

Respectfully submitted,
J. R. MASON,
In Propria Persona.

CERTIFICATE OF PETITIONER.

I hereby declare that the foregoing petition for a rehearing is submitted in good faith and is not interposed for delay.

Dated, San Francisco, California,
March 7, 1941.

J. R. MASON,
In Propria Persona.